IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5810 of 2000
with
CRIMINAL MISC APPLICATION No 2185 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMDASJI GURU HARIKISHANDASJI

Versus

STATE OF GUJARAT

Appearance:

CRI.MISC. APPLICATION No 5810 of 2000 :
MR KB ANANDJIWALA, FOR MR.AJ YAGNIK for Petitioners
MR MA BUKHARI, APP for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2
CRI.MISC. APPLICATION No 2185 of 2001 :
MR J.B.DASTOOR FOR MR.I.H.SYED for Petitioners
MR ND GOHIL, APP for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH
Date of decision: 12/04/2001

ORAL COMMON JUDGEMENT

1. Rule in both these applications. Service of Rule is waived by ld. APP Mr.M.A.Bukhari for Respondent No.1 State & by Mr.M.R.Shah, ld. counsel for Respondent No.2

in Cri.Misc.Application No.5810/2000. Similarly, service of Rule is waived by ld. APP Mr. N.D.Gohil for Respondent no.1 State and by Mr.M.R.Shah, ld. counsel for Respondent No.2 in Cri.Misc. Application No.2185/2001.

1-A. Both these Criminal Misc. Applications are preferred under sec. 439 of CrPC praying bail by the petitioners-accused of Sessions Case No. 369/99 pending in the Court of ld. Addl. Sessions Judge, Nadiad. Sessions Case is registered on the strength of the chargesheet filed at the conclusion of investigation of FIR registered on 29.10.1998 by CBI, Mumbai vide CR No. RC.3(S)/SCB/98-Mumbai for the offences punishable under sections 120B, 365 of IPC. CBI, Mumbai on investigation, chargesheeted five numbers of accused persons for the offences punishable under sec.120B, 302, 364, 201 of IPC. Since both the applications arise from same chargesheet involving same set of facts, the same are heard and disposed of by this common order.

2. Cri.Misc. Application No. 5810/2000 is filed by the petitioners- original accused nos. 4, 3 & 5 respectively whereas Cri.Misc. Application No.2185/2001 is filed by the petitioner- original accused no.2. As per the Note of Registry, 10 other bail applications were moved earlier before this Court raising bail plea and they are heard and decided by this Court at the relevant time. Out of aforesaid applications, some of the applications were moved by the petitioners-accused before filing of the chargesheet by CBI and some of the applications were moved after receipt of the chargesheet papers. According to ld. counsel appearing for petitioners, petitioner no.3 of Cri.Misc. Application No. 5810/2000 has approached this Court for bail for the first time after filing of the chargesheet. Rest of the three petitioners have moved 2nd time or 3rd time for bail after filing of the chargesheet.

3. Ld. counsel Mr. K.B.Anandjiwala appearing for ld. counsel Mr.A.J.Yagnik for the petitioners of Cri.Misc. Application No.5810/2000 has argued at length on all the relevant points. Ld. counsel Mr. J.B.Dastoor appearing for ld. counsel Mr. I.H.Syed for the petitioner of Cri.Misc. Application No. 2185/2001 has mainly adopted the submissions advanced by ld. counsel Mr. Anandjiwala and has tried to distinguish the case of the petitioner Shrijicharandas Swami and by placing reliance on some judgments of the Apex Court, has submitted that the petitioner Shrijicharandas Swami be enlarged on bail for want of legal and/or adequate evidence. Mr. M.R.Shah, ld. counsel appearing for CBI and ld. APP Mr. N.D.Gohil & Ld. APP Mr. M.A.Bukhari appearing for the State of Gujarat, have resisted the

bail plea of all the petitioners from all the corners.

4. Some facts in nutshell of the prosecution case may be stated so as to appreciate the submissions advanced by the parties and other technical and/or legal contentions raised during the course of submission. As per the say of the prosecution, one Shri Gadadharanandji, one of the key person of Vadtal Swaminarayan Temple having large number of disciples, was kidnapped on 3.5.1998. The fact of his missing was initially reported to Chaklasi Police Station by one Jatin Bhagat, disciple of missing Gadadharanandji.On 5.5.1998, Chaklasi Police Station registered "Janvajog Entry" in Chaklasi Police Station vide SL No.27/98 on the strength of written report by Jatin Bhagat and an inquiry was initiated. This Jatin Bhagat, by moving Cri.Misc. Application No.3996/98 before this Court, alleged inter alia that the investigation is not being done properly by police and suspected accused having very good influence and they themselves being very influential persons in the area, agency is not carrying investigation properly. It was also alleged that investigation has been carried out as per the signals given by the accused persons. Ultimately, the entire investigation was transferred to CBI, Mumbai. It is pertinent to note that though CBI has some infrastructure and office in the State of Gujarat at Ahmedabad, the investigation was entrusted to CBI, Mumbai and accordingly, above-referred complaint came to be registered on 29.10.1998. As per the short summary brought to the notice of this Court by the ld. counsel Mr. M.R. Shah for CBI, Mumbai, the case of the prosecution rests entirely on circumstantial evidence and on some part of confessional statement. Nature of evidence collected by CBI is of various type. Prosecution relies on statements of certain key witnesses and some important documents like document of ownership of Maruti Van bearing Registration No. GJ-06-1894 recovered. Said Maruti van was recovered in a burnt condition owned by the original accused no.2 Madhavprasad on 15.12.1998 and panchanama drawn by officer of Vinchhiwada Police Station in State of Madhya Pradesh as well as panchanamas drawn by CBI under sec.27 of the Evidence Act etc. Opinion evidence of Doctor and Forensic Science Expert is also collected. Some photographs are also taken and some videography is also made. Papers of one complaint registered on 4.5.1998 at Vinchhiwada Police Station by one tribal named Mangala Dhula Damor and inquest panchanama drawn by the Station House Officer Mr. Narayansinh of said police station on 4.5.1998, are also relevant. In short, I have considered all the relevant aspects brought to the notice of this

court during the course of submissions. I have also considered the motive pleaded by the prosecution and existence of wheel within the wheel amongst Sadhus & Disciples having faith in Vadtal Gadi of Swaminarayan Sampraday, one of the sects of Hinduism. Vadtal Swaminarayan Temple is a religious-cum-spiritual institution managed as per the scheme framed under the relevant provisions of the Bombay Public Trusts Act. Initially, complaint registered by CBI was against four suspects named in the FIR at Annex.A to both the petitions, but on investigation, as per CBI, it has unearthed the correct story and the events occurred right from kidnapping of Gadadharanandji on 3.5.1998 till he was done to death and disposed of in the forest area located under Vinchhiwada Police Station of Madhya Pradesh. CBI has entered into investigation after lapse of some months. Approach of some of the witnesses after deadbody of victim Gadadharanandji was found, may have change, but this needs scrutiny.

5. Mr. Anandjiwala, ld. counsel appearing for ld. Counsel Mr. A.J.Yagnik for the petitioners-accused of Cri.Misc. Application No. 5810/2000, has argued that the case of the petitioners should be considered on merits also as after the order passed by this Court on 5.4.2000 (Coram: R.P.Dholakia,J) in Cri.Misc.Application NO. 7388/99, accused had applied for the statements recorded by the State Investigating Agency to enable them to meet with the case against them. Non-supply of such documents to the accused with papers of chargesheet was likely to cause prejudice to the defence side. Petitioners were supplied with the set of statements recorded by the State Investigating Agency later on. Ld. Counsel Mr. Anandjiwala has tried to point out material contradictions and improvements made by the witnesses cited in the police challan filed by CBI Mumbai and has argued that there is no prima facie case of criminal conspiracy against any of the petitioners and, therefore, they should be enlarged on bail pending trial. There is no direct evidence against any of the petitioners. The alleged confessional statements on which prosecution relies, are inadmissible in evidence in the Court of law and, therefore, in absence of legal and/or adequate evidence, the petitioners should not languish in jail for indefinite period and this Court should exercise its discretion in favour of the petitioners. During the course of submissions, ld. counsel while giving response to the affidavit filed by the I.O. Mr. Gopal Motilal Krushikar, Deputy Supdt. of Police, CBI, Mumbai, has fairly conceded that petitioner no.2 Madhavprasad Swami had escaped from the police custody in the month of

April, 2000 from Navli Gurukul when he was given temporary liberty for one day with police escort and CBI was not able to trace him for several days and with great difficulties, after 40 days, agency could apprehend him. All the three petitioners have approached for bail on the same ground. I agree that a wrong committed by petitioner no.2 should not be viewed prejudicially qua rest of the petitioners and their say on the plea of bail should be appreciated individually and on their own merits. Petitioner no.1 Ghanshyam Prakashdasji is before this Court for bail second time after filing of the chargesheet. He is praying bail on two grounds; namely (i) on delayed trial, and (ii) on the contradictions found in the evidence of the witnesses from the police papers supplied to the petitioners at a subsequent stage, after filing of the chargesheet. Mr. Anandjiwala has tried to justify the bail plea of petitioner nos. 1 & 3 ignoring the fact that petitioner no.2 had misused some liberty granted to him by this Court temporarily i.e. for a day and that too under police escort. The petitioners accused being under-trial for a period of around two years, should be released on bail considering the totality of the facts and circumstances of the case, is the backbone of the submission of ld. counsel Mr. Anandjiwala. Material improvements made by the prosecution witnesses after investigation was transferred to CBI, Mumbai, should be viewed seriously and visualing anticipated result, petitioners should be enlarged on bail, is the second submission of ld. counsel Mr. Anandjiwala.

6. Ld. Counsel Mr. J.B.Dastur for Ld.counsel Mr. I.H.Syed for petitioner of Cri.Misc. Application No. 2185/2001 has submitted that though this application is second application for bail after filing of chargesheet, the say of the petitioner should be considered on merits as earlier application bearing Cri.Misc. Application No. 67/2001 was withdrawn unconditionally with a view to approach Apex Court. Such withdrawal should not be treated as dismissal on merits. Ld. counsel has taken me through entire set of facts and finding recorded by this Court while dealing with bail application preferred by the accused persons prior to the chargesheet and subsequent to the chargesheet. It is also pointed out that petitioner Shrijicharandas swami had applied for bail after filing of the chargesheet before this Court and very recently on 16.3.2001, bail application preferred by him has been withdrawn unconditionally and in couple of days, said accused has preferred Criminal Misc. Application No. 2185/2001 on the ground that his plea of bail was not entertained on merits after

chargesheet and he is otherwise entitled to pray for bail on the ground of delayed trial considering the provisions of Article 21 of the Constitution of India. This very petitioner had applied for bail and was granted temporary bail by this Court vide order dated 31.7.2000 (Coram: Kundan Singh, J) while dealing with Spl.Cri. Application NO. 620/2000. In support of this say, he has tendsered zerox copy of the said order. It is submitted that during the period for which he was enlarged on bail, he has not tried to tamper with any witness nor he has jumped the bail. He was released on bail on health ground and was all the time under medical treatment. He has further submitted that the apprehension expressed by the Investigating Officer that this petitioner would play with key prosecution witnesses, is baseless and that petitioner is unnecessarily languishing in jail for no fault on his part. It is original complainant Jatin Bhagat who has approached this Court challenging the legality of the charge framed by the ld. trial Judge and has obtained stay of proceedings, when trial was about to begun. It is submitted that it is not even possible to assess the time by which trial would be culminated. Ld. Counsel Mr. Dastoor has mainly relied on three decisions of the Apex Court,namely :-

(1) Raj Deo Sharma (I) v/s State of Bihar, reported in (1998) 7 SCC P.507.
(2) Vivekkumar v/s State of U.P., reported in (2000) 9 SCC P.443.
(3) Raj Deo Sharma (II) v/s State of Bihar, reported in (1999)7 SCC P.605.

It has been further submitted that the prosecution intends to examine 111 witnesses. Though this Court was aware that the facts of the case are complex and prosecution may examine large number of witnesses this being a case of circumstantial evidence, had directed vide order dated 4.4.2000 (Coram: R.P.Dholakia, J) while dealing with Cri.Misc. Application No. 7388/99,that prosecution should conclude the trial within six months. Even than, the prosecution has failed in even commencing the trial and, therefore, in view of the pronouncement of the Apex Court in the case of Rajdeo Sharma (supra), the present petitioner should be enlarged on bail pending trial.

7. Mr. M.R.Shah, ld. counsel appearing for CBI, Mumbai has drawn my attention to the earlier orders passed by this Court while dealing with various applications preferred by the petitioners before this Court. Mr. Shah has submitted that the case of any of

these petitioners need not be appreciated on merits as being successive applications after chargesheet. Technically, petitioner no.3 of Cri.Misc. Application No. 5810/2000 had not preferred fresh bail application after chargesheet, but prima facie case against all the accused facing charge of criminal conspiracy for the murder of Gadadharanandji has been appreciated by this Court. The accused who are granted bail by the Court of Sessions or otherwise, are facing bail cancellation applications preferred by the CBI. He has also submitted that as per the say of the Investigating Officer who is present in the Court today, CBI is receiving complaints from the witnesses and in view of the post-bail activities, CBI is going to move the competent court for cancellation of bail. This case being the case based on circumstantial evidence, release of any of the petitioners may seriously prejudice the entire case. The petitioners are well-off and competent enough in playing with key witnesses of the prosecution. Petitioner no.2 Madhavprasad Guru Harjivandasji known as "Maldar Swami" had applied for temporary bail for two months before this Court by filing Criminal Misc. Application No. 1730/2000. However, this Court, (Coram: R.P.Dholakia,J), vide order dated 5.4.2000, refused bail plea and passed the following order:-

> ".... Looking to the facts and circumstances of the case, I direct the Jail Authority, District Jail, Nadiad, to take the prisoner- Madhav Prasad Madhavdas Swami Guru Harijivandasji Kothari, who is in jail in connection with the offence registered as R.C.3/S/98 of C.B.I., Mumbai along with the police protection at Swami Narayan Temple at Vadtal where Guru Swami Harijivandasji Kothari is taking rest in the morning of 7.4.2000 and bring him back in the evening on the same day before 6.00 P.M. ....."

Ld. Counsel Mr. Shah has submitted that though petitioner Madhav Prasad was escorted by two police constables, was able to escape from Navli Gurukul which is under the administration and control of Vadtal Swaminarayan Temple Administration and CBI could not trace him for 40 days. On 40th day, he was apprehended from Bombay while he was in the dress of a "Sansari" with altogether a different look. Investigating Officer has apprehended that petitioners or any of the petitioner, if are granted bail, then they may jump the bail and can also play with the witnesses because of their thick link in the local area. Scope of misuse of the liberty is one of the main grounds advanced on behalf of CBI. Mr. Shah

has also submitted that considering the complexity of facts and number of witnesses to be examined and nature of experts need to be examined, period of two years as under-trial cannot be said to be unreasonable. Gravity of the offence, sensitivity and delicacy attached to the matter should be focused and while exercising jurisdiction vested with this Court under Section 439 of CrPC, this Court should strike the balance. Mr. Shah has pointed out some observations of the Apex Court in some decisions, namely:-

(1) Common Cause Judgments reported in (1996) 4 SCC P.33 & (1996)6 SCC 775;
(2) Set of decisions in Raj Deo Sharma referred to herein above.

8. Having given anxious consideration to the entire facts and circumstances of the case brought before me by the parties and relevant legal contentions, I am of the view that bail plea raised by all the petitioners requires to be rejected. I have considered the nature of evidence collected by the prosecution. Summary brought before this Court as to the nature of evidence collected by CBI is indicative of one fact that CBI must have tried and made all good efforts to unearth the crime. Some suspects named in FIR are not even chargesheeted after conclusion of investigation. The persons against whom some evidence was available with links of criminal conspiracy and accused against whom CBI was prima facie able to establish links, are chargesheeted and now the Court of Sessions has framed the charge against all the petitioners. Charge against petitioners-accused came to be framed by the ld. Addl. Sessions Judge and date for recording of evidence was fixed on 21.11.2000. However, because of the stay order granted by this Court while dealing with Criminal Misc. Application No. 6742/2000 filed by the original complainant Jatin Bhagat vide order dated 20.11.2000, i.e. on the previous day of recording of evidence fixed by the Court of Sessions, the trial could not effectively commenced. I am told that three witness were kept ready in the Court of Sessions when it was informed about the stay of trial granted by this Court. There is no lethargy or deliberation to protract the trial on the part of CBI. Ld. counsel appearing for CBI has submitted that original informant Jatin Bhagat had approached this Court after some months of filing of the chargesheet and the framing of charge by Sessions Court agitating the grievance against the report filed under sec.173 of CrPC without informing or joining CBI as party in the above said application and has obtained ex-parte stay against trial. As this Court being the

bail Court, is not supposed to comment upon such ex-parte stay prayer or persuation and act of approaching this Court without joining CBI as party. I am told that grievance of the original complainant Jatin Bhagat is that some of the key accused and mainly "Gadipati" (The Head) of the Institution namely Mr. Ajendraprasad is illegally dropped from the list of the accused by CBI. CBI smells something with the conduct of the original informant Jatin Bhagat and ld. counsel Mr. Shah has submitted that CBI is eager to see that trial proceeds on vacation or other appropriate modification of stay order granted by this Court.

9. CBI has supplied all the relevant papers to the accused before the commencement of the trial and framing of charge. On behalf of the petitioners accused, it was submitted that the petitioners should be supplied with the papers of earlier stage of investigation i.e. papers of inquiry conducted by Chaklasi Police or any other investigating agency. Prosecuting Agency -CBI does not rely on these papers. However, in view of the accepted principles of criminal jurisprudence and to offer fair trial, on demand, accused are supplied with papers of inquiry conducted by the local police. As the papers are of inquiry, most of the statements recorded are signed by the concerned witnesses. Improvements or contradictions found from two sets of papers need detailed appreciation and the bail court is not supposed to deal with or appreciate the evidence. Issue of admissibility or mode of using previous statements of witnesses, is supposed to raise various factual and/or legal contingencies during the examination of these witnesses. So, it is rightly said in more than one decisions of this Court and the Apex Court that bail Court should not try to do this venture of appreciation of evidence. It may seriously prejudice either side. CBI has chargesheeted the accused persons and Addl. Sessions Judge, Nadiad framed charge on 7.6.2000. Thereafter, petitioners moved application before the Addl. Sessions Judge demanding all previous statements of witnesses vide application exh.20 on 20.6.2000. On 26.7.2000, the court concerned directed the prosecution to provide the accused all previous statements recorded by the investigating agencies other than CBI. I am told that these statements were supplied to the petitioners in the month of August,2000.

10. Petitioner no.1 of Cri.Misc. Application No. 5810/2000 Ghanshyamdasji prayed for bail on the identical ground by filing Cri.Misc. Application No. 7388/99. After some adjournments, aforesaid application came to be disposed of by this Court (Coram: R.P. Dholakia, J)

vide following order on 4.4.2000 :-

" Heard ld. counsel for the petitioners Mr. H.N.Jhala, ld. APP for the respondent no.1 State Mr. H.L.Jani and ld. Special Public Prosecutor for C.B.I. Mr. J.M.Panchal. At the end of arguments, ld. counsel for the petitioner seeks permission to withdraw this petition with a liberty to expedite the trial since the petitioner is in jail since long. It is a fair and just request made by the ld. counsel for the petitioner. Permission is granted as prayed for. This petition stands disposed of as withdrawn. Looking to the facts and circumstances of the case, I direct the District and Sessions Judge, Kheda to proceed with the trial of the Sessions Case which has arisen from CR No. RC-3(S)-SB, Mumbai and dispose of as expeditiously as possible and if possible, complete the same before the end of June,2000. Ld. counsels for the parties have given assurance that they will give full co-operation to the court below. Notice is discharged."

11. Accused Shrijicharan Swami- petitioner of Cri.Misc. Application No. 2185/2001 had approached this Court for bail by filing Cri. Misc. Application No. 7131/99 and amongst other grounds, he had also taken following two grounds in support of his bail plea:-

"(ix) Similarly there is also contradiction in the statements of different witnesses regarding timing of the last seeing of Swamiji and sitting by him in the Maruti Van by different witnesses.

(x) The statements recorded by the Local Crime Branch investigating officer have not been supplied to the accused and it is necessary for the just decision of the bail application that the entire record of the investigation carried out prior to the investigation by CBI may be ordered to be brought on the record of the Hon'ble High Court. "

After some adjournments, this Court (Coram: R.P.Dholakia,J) passed the following order on 4.4.2000 after hearing Mr. Jhala, ld. Counsel for the accused Shrijicharandas Swami, in Cri.Misc. Application No.7131/99:-

" Heard ld. counsel for the petitioners Mr. H.N.Jhala, ld. APP for the respondent no.1 State Mr. H.L.Jani and ld. Special Public Prosecutor for C.B.I. Mr. J.M.Panchal. At the end of arguments, ld. counsel for the petitioner seeks permission to withdraw this petition with a liberty to expedite the trial since the petitioner is in jail since long. It is a fair and just request made by the ld. counsel for the petitioner. Permission is granted as prayed for. This petition stands disposed of as withdrawn. Looking to the facts and circumstances of the case, I direct the District and Sessions Judge, Kheda to proceed with the final hearing of the Sessions Case which has arisen from CR No. RC-3(S)-SB, Mumbai and dispose of as expeditiously as possible and if possible, complete the same before the end of June,2000. Ld. counsels for the parties have given assurance that they will give full co-operation to the court below. Notice is discharged."

(Just similar order to the order passed in Misc. Criminal Application No. 7388/99 on that very day)

12. The said petitioner Shrijicharandas Swami again applied for bail on health ground by moving Spl. Cri. Application No. 620/2000 in the month of July,2000 and this Court (Coram : Kundan Singh, J) passed following order on 31.7.2000 while disposing of the said application:-

"1. xxx xxx xxx

2. Considering the facts and circumstances of the case, the petition is allowed. The petitioner is allowed to go to Astha Surgical Hospital, Ahmedabad for medical examination and check up under police escorts. In case, after medical examination the doctor of Astha Surgical Hospital finds that the petitioner is required to be operated in that event, the petitioner will be admitted in the hospital as an indoor patient for the requisite period under police protection and thereafter he will be taken in custody of the jail authorities. Althroughout, the petitioner will remain under police protection at the State's costs. The petitioner will bear the expenses of medical treatment and operation.

Only one attendant will be permitted to see and meet the petitioner. Rule is made absolute."

This order negatives the contention raised by the petitioner Shrijicharandas Swami that he has not misused the liberty granted to him by way of temporary bail, as the same is not correct statement of fact. He was not granted temporary bail, but he was permitted to undergo medical treatment under police protection and police escort. He may only say that he has not behaved in the manner in which accused Madhavprasad behaved while under police protection.

13. Accused Shrijicharandas Swami again applied for bail through his counsel Mr. D.C.Dave by filing Cri. Misc. Application No. 5676/2000 in the month of September, 2000 i.e. after receipt of statements of witnesses recorded by investigating agencies other than CBI. Notice was issued to CBI and after hearing ld. counsel Mr. Dave for the petitioner and after perusal of the papers as to health of petitioner Shrijicharandas Swami, prayed for withdrawal of the application in view of the observations made by this Court (Coram: C.K.Buch,J) while passing the order on 21.11.2000 while disposing of the aforesaid application.

14. The say of ld. counsel Mr. Dastoor for the petitioner Shrijicharandas Swami was not correct when he submitted that the application filed by petitioner Shrijicharandas Swami through his ld. Counsel Mr. Anandjiwala being Cri.Misc. Application No. 67/2001 was the first application on merits after filing of the chargesheet and receipt of previous statements of all the witnesses supplied by the investigating agency. Petitioner Shrijicharandas Swami when had approached this Court for bail by filing Cri.Misc. Application No.67/2001, had agitated all the grounds including the ground of delayed trial. This application has been disposed of as withdrawn on the strength of the instructions received by ld. counsel Mr. Anandjiwala for the petitioner Shrijicharandas Swami as petitioner had sent his wish to withdraw said bail application to the Registrar of this Court by addressing Registered A.D. letter. This letter was signed on 28.2.2001, but the same was received by the Registry on 9.3.2001. Envelope received by the Registry indicates that the same was dispatched by one of his disciples from Navli Gurukul on 7.3.2001 at 11.48 A.M. So, considering the oral as well as written submissions of the petitioner Shrijicharandas Swami, this Court (Coram: C.K.Buch,J), passed following order on 15.3.2001 in aforesaid Cri.Misc. Application

No. 67/2001 :-

" Mr. Anandjiwala, Ld. counsel appearing for the petitioner seeks leave to withdraw this petition. Leave granted. Petition stands disposed of as withdrawn. Notice discharged."

15. My attention is drawn to the zerox copy of the writ received by ld. counsel Mr. Dastoor for the petitioner Shrijicharandas Swami. This writ is of the Apex Court indicating the order passed in the Writ Petition (Criminal) No. 54/2001 (For Preliminary Hearing). The Apex Court, while dealing with the petition moved under Article 32 of the Constitution, passed the following order on 19.3.2001 :-

" We are not inclined to entertain this petiton under Article 32 of the Constitution of India. It accordingly stands dismissed. If the petitioner is aggrieved by any particular order of the High Court, he may move the appropriate forum. "

For the reasons best known to the ld. counsel appearing for the petitioner Shrijicharan Swami, he has not produced the copy of the petition moved before the Apex Court. It seems that instead of moving appropriate forum against a particular order of the High Court (emphasis supplied), he again moved this Court for bail on 27.3.2001 through ld. counsel Mr. I.H.Syed by filing present Cri. Misc. Application No. 2185/2001. Vakalatnama produced with this application seems to have been signed on 15th February, 2001 in presence of Superintendent, District Jail, Nadiad. Without going into this technicality and modus adopted, this Court is able to appreciate anxiety to get bail pending trial of accused Shrijicharandas Swami.

In view of above said facts, it is clear that on merits, bail plea of the petitioner Shrijicharandas Swami was appreciated by this Court and the Court of Sessions on more than one occasion and considering the allegations and prima facie strength therein, the petitioner has not been granted bail. Directly or indirectly, I am not inclined to record any finding which may have a contrary or conflicting effect. It is settled proposition that disposal of an application on withdrawal or dismissal on such withdrawal has the same effect as of dismissal on merits. I agree that there is no bar against consecutive or successive bail applications, but atleast each subsequent one must bring some new ground or change in

circumstance. Date of withdrawal of earlier application being Cri.Misc. Application No. 67/2001 is 15.3.2001. Petition under Article 32 of the Constitution moved before the Apex Court by Shrijicharandas Swami was dismissed on 19.3.2001. In absence of availability of the copy of the petition, it would be difficult to accept the contention that this Court should hear bail plea of the petitioner on merits again and right enshrined under Article 21 of the Constitution of India for speedy trial should be considered favourably. When this legal plea was available to the petitioner Shrijicharandas Swami, even than Cri.Misc. Application No. 67/2001 was moved and withdrawn before this Court, subsequent application in couple of days after its withdrawal should not be and cannot be entertained. It seems that Court proceedings have been taken by this petitioner as a joy-ride. I agree that one may take every step to see that his personal freedom is not jeopardised and is zealously protected by the Court, but not in the manner adopted by the petitioners. So, without expressing any displeasure and with a view to see that petitioner Shrijicharandas Swami feels that justice is being done with tolerance. I would deal with his bail plea flowing from the right embodied in Article 21 of the Constitution, with other petitioners.

16. As stated earlier and in light of evidence available on record, I am of the view that there is prima facie case against accused Vijay Bhagat- petitioner no.3 of Cri. Misc. Application No.5810/2000. I have anxiously considered the allegations made against said petitioner Vijay Bhagat . Undisputedly, this Vijay Bhagat is disciple of Shrijicharandas Swami- petitioner of Cri. Misc. Application No. 2185/2001. According to the prosecution, he has assisted other accused persons in commission of the crime. He was a party in adding drug which would take a person under sedation, when cold drink was prepared and served to deceased Gadadharanandji. Deceased Gadadharanandji is referred as "Dada" by number of witnesses. According to the prosecution, accused Madha viz. Madhavprasad strangulated Gadadharanandji and Vijay Bhagat abetted that act by holding hands of deceased Gadadharanandji. He was a driver of Maruti van of accused Madhavprasad when deadbody of deceased Gadadharanandji was taken out from Navli Gurukul on 3.5.1998. He was also a party in shifting body of deceased Gadadharanandji from the room of Navli Gurukul into Maruti van. As per the statement of prosecution witness Jagdish Soni, this accused (Vijay Bhagat) exchanged Gold Kanthi (chain) removed from the person of deceased Gadadharanandji and also exchanged Gold

Madaliya, weighing about 10.5. Grams of gold. Witness Jagdish Soni is having a shop being a goldsmith. According to Shri Jagdish Soni, this occurred in the month of May,1998. Panchanama drawn by CBI under Section 27 of the Evidence Act is also a relevant piece of evidence which has taken CBI for the first time to Vinchchhiwada in Madhya Pradesh. Till then Vinchchhiwada police of Madhya Pradesh was not aware of the fact that FIR lodged with its Police station on 4.5.1998 and inquest panchanama drawn, is of a body of missing Swami Gadadharanandji of Vadtal Swaminarayan Temple. Key of a room and tooth covered with gold recovered by Vinchchhiwada police at the time of drawing panchanama in the month of May,1998 has an important bearing on the say of the prosecution against all the accused including Vijay Bhagat. The confession made by accused Vijay Bhagat before the CBI Officers may not be admitted during trial in evidence, but on the strength of the clue given by this accused, CBI was able to link and complete the chain of incident. Identification of this accused by some prosecution witnesses and especially prosecution witness Minaxi Patel may have an important effect on the totality of the evidence. So, the apprehension expressed by the Investigating Officer against all the accused persons that considering the gravity of offence, if petitioners are released on bail, they may jump the bail and/or are likely to either tamper with evidence or influence witnesses, cannot be ignored considering the sensitivity of the case, set of evidence collected and influence of the accused persons in the area. Delicacy of circumstantial evidence collected by the investigating agency in unfolding serious crime should be given proper weightage. However, in view of the right to speedy trial crystallised by various decisions of the Apex Court, bail plea of the petitioners needs appreciation. By referring some decisions and disposal of earlier number of bail applications heard and decided by this Court and the Court of Sessions, these applications could have been thrown out by this Court, but as the counsel appearing for the petitioners have hammered the point of personal freedom by placing reliance on various decisions and as they have prayed for reasoned order, this reasoned order is passed.

Verdict of the Apex Court in the case of State of Maharashtra v/s Ritesh, S/o Vasudeo Wanjari, 2001 AIR SCW 1154, would come in the way of the petitioner Vijay Bhagat, even if his application for bail is treated as first application for bail after filing of the chargesheet. In the aforesaid decision, the Apex Court,in para-6, has said:

"6. Once the final chargesheet has been filed in the trial Court, the High Court, under the normal circumstances, should have permitted the respondent to get a verdict of his innocence or involvement from the Court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out, in the instant case, to depart from such a usual established procedure. The order impugned being contrary to law is liable to be set aside."

17. While dealing with Cri.Misc. Application Nos. 7131/99 and 7388/99, this Court had directed the District & Sessions Judge, Kheda to proceed with trial and dispose it off as expeditiously as possible and if possible, by the end of June,2000. I have already referred order passed in aforesaid application herein above in paras-10 & 11 of this order. It can be argued that the concerned Sessions Court has failed in complying with this direction as the trial could not commence till November, 2000. On the day of order i.e. 4.4.2000, the charge was also not framed by the Sessions Court. Charge came to be framed in the month of June, 2000. CBI knowing it fully well, has not cared to pray for extension of time before this Court stating reasons. On perusal of the copy of Rojkam produced in Cri.Misc. Application No.5810/2000 at page-30, I am of the view that there was no fault on the part of the investigating agency for protraction of trial. Time taken by the investigating agency when it's office is located at Mumbai in attending various bail applications and other proceedings before this Court as well as before the Court of Sessions, cannot be ignored while appreciating rival contentions. Some of the accused are granted bail or temporary bail. Petitioner Shrijicharandas Swami was in the hospital for some period. Petitioner Madhavprasad @ Maldar Swami had absconded and was traced after 40 days. So, time spent during this period should not be considered adversely against the prosecuting agency. The prosecution has named 111 witnesses and set of witnesses indicates that some of them are key witnesses. Their examination may last for several days in view of the papers available. DNA test for confirmation of death of deceased Gadadharanandji and to ascertain identity of remanence of the deadbody collected by CBI and Vinchchhiwada Police at the time of drawing two different panchanamas and the opinion evidence needs to be led, can be visualised. Motive pleaded by the prosecution requires to be proved by examining several witnesses. After missing of Gadadharanandji, unusual or unprecedented meetings of

Board of Management were held before death could be known to the world, whether has any relevance is to be ascertained. These are the glimps of some of the important aspects which may require reasons and/or tempt the court to examine some witnesses as court witnesses. This has transpired in my mind when ld. counsel for the parties were heard at length. Bail Court has to consider such contingencies when plea is based on delay aspect.

18. The decision of the Apex Court relied on by the ld. counsel appearing for the petitioners in the case of Satya Brat Gain v/s State of Bihar, reported in (2000) 9 SCC P.398, would not help the petitioners because in the cited case, Director General and IG Police, Patna (Bihar) has practically conceded that trial against the appellant may not substantially progress in near future. Accused was an undertrial for more than five years. Here in the case on hand, with complex set of facts, accused are in custody for around two years which is comparatively much lesser period.

19. Decision of the Apex Court in the case of Vivekkumar v/s State of U.P., reported in (2000) 9 SCC P.443, wherein the Apex Court has granted bail considering the bail plea on the strength of right flowing from Article 21 of the Constitution, would also not help the petitioners. In that case, offender was facing trial for the offences punishable under Section 307 & 395, read with Section 149 of IPC and trial had not commenced. The bail plea was resisted on the ground that there were some lapses on the part of the counsel, but it was held that such lapse should notin that case be allowed to prejudice the say of the appellant. The judgment, in absence of details of the facts, would not help the petitioner. The case of hand, undisputedly, is in respect of more serious offence.

20. In the decision of Madhya Pradesh High Court in the case of Munna @ Kamta Prasad & another v/s State of Madhya Pradesh, 1986(3) Crimes 429, the Madhya Pradesh High Court released accused undertrial who were in judicial custody for a period of more than one year, factually, would not be applicable to the case on hand, if considered in light of the observations of the Apex Court in the case of Rajdeo Sharma (supra) and other decisions referred therein- subsequent pronouncements. Even otherwise, aforesaid decision of Madhya Pradesh High Court has persuasive value only.

21 Decision of the Apex Court in the case of State CBI/SPE, New Delhi v/s Pal Singh & Another, (2001) 1 SCC

247, also would not help the petitioners because the Allahabad High Court granted bail to the respondents solely on the ground that recovery of firearm was made only four years after murders. This order of bail was placed under suspension by the Apex Court. Accused were arrested on 18.6.1996 after lapse of 4 years. Two other accused persons could not have been arrersted because of stay of all further proceedings granted by the Allahabad High Court. Till 28.11.2000, nobody was sure as to when trial would commence and, therefore, the Apex Court refused to interfere with the order of bail. This decision would not help this Court in crystalising discretion in favour of the petitioner.

22. Decision of the Apex Court in the case of Rajdeo Sharma v/s State of Bihar, reported in (1998) 7 SCC P.507, deals with speedy trial. This decision is known as Rajdeo Sharma (I) decision. This decision relied on by the ld. counsel for the petitioners, if construed in proper perspective, it helps the prosecuting agency to some extent. As per the precedent and basic principle of jurisprudence, when the Apex Court has considered the very decision at any subsequent stage and has supplemented the earlier decision with modification or other qualifications, then it is the duty of the counsel appearing for the petitioners to cite both the decisions. In the cited case, Apex Court also considered the proposition laid down in the case of Abdul Raheman Antulay v/s R.S.Nayak, reported in (1992) 1 SCC 225 and considered all relevant aspects as to delay in conducting trial. Gist of decisions of Rajdeo Sharma (I) & (II) (supra), if considered in light of the facts of the bail application on hand, I am of the view that these decisions would not help any of the petitioners. While dealing with the case of Rajdeo Sharma (I) (supra), the Apex Court has considered following decisions which are relevant for our purpose:-

(1) "Common Cause" A Registered Society v/s Union of India, (1996) 6 SCC 775;

(2) "Common Cause" A Registered Society v/s Union of India, (1996) 4 SCC 33;

(3) Hussainara Khatoon (IV) v/s Home Secretary, State of Bihar, (1980)1 SCC 98

(4) Abdul Raheman Antulay v/s R.S.Nayak, (1992) 1 SCC 225.

23. In the case of "Common Cause" A Registered

Society (Supra), the Apex Court has said that pendency of criminal proceedings for long period operates as engine of oppression. Depending on nature of cases, accused may be released on bail or pass appropriate orders for discharging or acquitting the accused, can be passed. Considering the scope to release the undertrial on bail reflected in both the "Common Cause" cases (supra), it is clear that no party should be put to advantage where pendency of proceedings is wholly or partly attributable to dilatory tactics adopted by it. Where the proceedings are stayed by the higher court, the same also cannot be treated as disadvantage or adverse to either. Offences affecting public health, safety, convenience, decency and morals as listed in Chapter-14 of IPC, or such offences under any other law for the time being in force, bail discretion should not be exercised mechanically and the Court should strike the balance. I would like to quote some part of the decision of the Apex Court in Rajdeo Sharma (1) (Supra). Para-8 of said decision reads as under:-

> "8. The entitlement of the accused to speedy trial has been repeatedly emphasized by this Court. Though it is not enumerated as a fundamental right in the Constitution, this Court has recognized the same to be implicit in the spectrum of Article 21. In Hussainara Khatoon (I) v/s Home Secy., State of Bihar, the Court while dealing with the cases of undertrials who had suffered long incarceration held that a procedure which keeps such large number of people behind bars without trial for so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21. The Court laid stress upon the need for enactment of a law to ensure reasonable, just and fair procedure which has creative connotation after Maneka Gandhi case in the matter of criminal trials."

24. It is argued that because of stay granted by this Court on the application preferred by the original informant Shri Jatin Bhagat, there is very little scope for commencement of trial in near future. It is also submitted that original informant wishes to see that accused persons languish in judicial custody and trial is protracted. Irrespective of the stand taken by Shri Jatin Bhagat at the time of praying for stay of criminal trial against the petitioners, trial against the petitioners is inseparable and the approach of the CBI is dormant. However, as discussed earlier, the say of

counsel appearing for CBI cannot be ignored. It is rightly submitted that when this Court has fixed time limit to conclude the trial within a stipulation while passing order on 4.4.2000 referred to herein above, ld. counsel appearing for the CBI might have failed in convincing the Court at the relevant time to fix some longer period for disposal by quoting complexity of facts, number of witnesses and other contingencies. CBI can legitimately bring all these aspects while resisting the bail plea. The order passed by this Court on 4.4.2000 is very well worded and the same is based on great wisdom. The order impliedly indicates that prosecuting agency can positively resist the bail plea on the ground of protraction of trial, and prosecution, if possible, was asked to conclude the trial as expeditiously as possible. Phrase used "and if possible" should be interpreted in its true and correct perspective. Order has casted duty to conclude the trial mainly on the Court. Ld. Addl. Sessions Judge, Kheda at Nadiad had prayed for extension of time for a further period of six months to conclude trial vide its letter dated 6.7.2000 and the request of the ld. trial Judge was placed before the Court (Coram: R.P.Dholakia,J) by the Registry along with submission. On such submission, the following order came tobe passed by this court (Coram: R.P.Dholakia,J) on 21.7.2000:-

" 2nd Jt. District Judge, Kheda at Nadiad vide his request letter dt; 6.7.2000 addressed to Registrar, High Court seeking extension of time to decide Sessions Case No. 369/1999. I have gone through the request letter wherein it is established that above sessions case was ordered to be expedited as requested by the ld. counsel for the petitioner. But facts remain that ld. advocate appearing before the trial Court for the petitioner and the petitioner himself have not given any co-operation worth the name to proceed further in the matter as a result of that, ld. Judge could not proceed further in the matter. Hence, time is granted as requested by the ld. 2nd Jt. District Judge, Kheda at Nadiad."

25. While dealing with A.R. Antulay's case (supra), the Constitutional Bench of the Apex Court has dealt with many aspects. Relevant aspects for our purpose are the guidelines reflected in paras 85 & 86 of the judgment. In para-85 of the aforesaid decision, the Apex Court has observed as under:-

"85. ... ... In cases, where quashing of

charges/ convictions may not be in the interest of justice, it shall be open to the Court to pass such appropriate orders as may be deemed just in the circumstances of the case. Such orders may, for example, take the shape of order for expedition of trial and its conclusion within a particular prescribed period, reduction of sentence when the matter comes up after conclusion of trial and conviction, and so on."

Phrase "and so on" is indicative of powers to issue further directions including enlarging the accused on bail on demand or otherwise. Obviously, it can extend time for conclusion of trial. Para-86 of the judgment stipulates propositions emerged for the discussion as mentioned therein. The Apex Court has said that these propositions are meant to serve as guidelines and Apex Court has forewarned that these propositions are not exhaustive. Right to speedy trial flowing from Article 21 encompasses all stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. In sub-para (3) of para-86 of the aforesaid judgment, the Apex Court has said:-

"(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should not be subjected to unnecessary or unduly long incarceration prior to his conviction.

(b) xxx xxx xxx

(c) xxx xxx xxx

Delay is a known defence tactic. Ld. Counsel Mr. M.R. Shah for the CBI has, therefore, shown anxiety on behalf of the CBI that they are anxious to see that stay granted by this Court is either vacated or any other appropriate order is passed at the earliest so that trial can get some momentum. One should also consider that there may be cases where prosecution for whatever reasons also indulges in delaying tactics. Therefore, in every case, where right to speedy trial is alleged to have been infringed, the question to be raised and answered is as to who is responsible for the delay ? These are the exact words by the Apex Court in sub-para (4) of para-86 of the aforesaid judgment.

26. According to me, looking to the totality of the facts and circumstances available on record, the present petitioners cannot be granted bail on the pleas raised on their right to speedy trial. Two years may be reasonably long period, but cannot be said to be unduly long period in such complex cases. Sub-para (5) of para-86 of the aforesaid judgment is the clear reply to the submissions made by the petitioners. Apex Court has said therein:-

> "(5) While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on- what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one."

Sub-para (8) of para-86 says:-

> (8) Ultimately, the court has to balance and weigh the several relevant factors "balancing test" or "balancing process" and determine in each case whether the right to speedy trial has been denined in a given case." (emphasis supplied).

Apex Court has observed that it is neither advisable nor practicable to fix any time limit for trial of offence. Any such rule is bound to be a qualified one. Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under the Constitution, has tobe read in light of the concept of speedy trial. In light of guidelines issued by the Apex Court and to supplement proposition laid down by the Constitutional Bench in Abdul Raheman Antulay's case (supra), while dealing with Rajdeo Sharma's case (supra), the Apex Court has issued certain directions. These directions mainly deals with the trials concerning the offences punishable (i) for imprisonment for a period not exceeding 7 Years, and (ii) the cases where the accused have remained in jail as an undertrial for a period not less than half of the maximum period of sentence/ punishment prescribed for the offence, etc.

27. My attention has been drawn to certain guidelines issued by the Apex Court while dealing with writ petition filed by Supreme Court Legal Aid Committee, representing undertrial prisoners, in the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners v/s Union of India & others, (1994) 6 SCC P.731. In that decision, the Apex Court has observed that to deprive personal liberty of a person without ensuring speedy trial is violative of Article 21. The Apex Court was dealing with the offence punishable under NDPS Act. Observations of the Apex Court indicate that irrespective of statutory embargo of sec.37 of NDPS Act, right visualised by Article 21, has some precedence over such statutory embargo. The petitioners are facing trial for offence where the maximum punishment is life imprisonment, if we do not talk about capital punishment. In the aforesaid decision, the Apex Court issued certain directions. Direction nos. (ii) & (iii) are relevant for the purpose. That -

"With respect to pending cases, we direct as under:-

(i) xxx xxx xxx

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount in no case be less than Rs.50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount. "

28. Irrespective of imposition of very strict conditions referred to in the aforesaid judgment and amount of personal bond and sureties, it can legitimately be held that where prosecuting agency is not at fault for delaying tactics, then to strike the balance, the Court can consider other attending circumstances including the nature of offence, number of accused, number of

witnesses, workload of the court concerned, vis-a-vis the gravity and sensitivity of the crime while issuing directions to the subordinate court to conclude the trial within stipulated time period. Here in the case on hand, especially in view of above said discussion and proposition of law reflected in various decisions of the Apex Court and especially in light of the order passed by this Court (Coram: R.P. Dholakia, J) dated 21.7.2000 on the request letter of Addl. Sessions Judge, Kheda at Nadiad, this Court while rejecting the bail plea on the strength of the right embodied in Article 21 of the Constitution, can say that in such cases, period of around 3 to 4 years in concluding trial, cannot be said tobe unduly long period. This Court can suo motu enlarge further time with a view to strike the balance. This will not prejudice either side and shall simultaneously take care of the apprehension expressed by the Investigating Officer in his affidavit. I am inclined to extend the time fixed by this Court (Coram: R.P.Dholakia,J) vide order dated 21.7.2000, for a further period of 9 (nine) months from the date of receipt of writ by the trial Court. It is further observed that it will be open to the petitioners to approach this Court for bail afresh after expiry of the aforesaid period and in that event, it will be open to the prosecuting agency to resist the same by bringing all the relevant aspects of the proceedings before the Court concerned.Directions accordingly.

29. For the reasons aforesaid, bail plea of all the petitioners-accused is rejected and consequently, both these applications are also dismissed. Rule in each application is discharged subject to directions in earlier para-28 of this common judgment.

30. Before parting with the order, it is observed that at the initial stage, ld. counsel Mr. Anandjiwala appearing for ld. counsel Mr. A.J.Yagnik for the petitioners in Cri.Misc. Application No. 5810/2000, has submitted that he would not press this application qua petitioner no.2 Madhavprasad @ Maldar Swami as he had taken disadvantage of liberty granted to him by this Court for one day under police escort on the ground of visiting his Guru and had fled away from police surveillance. But at the conclusion of arguments and when this Court had expressed its non-inclination to grant bail even to petitioner nos. 1 & 3 of said application or to the petitioner of Cri.Misc. Application No. 2185/2001, at the instance of ld. counsel Mr. Yagnik appearing for the petitioners of Cri. Misc. Application No. 5810/2000, ld. counsel Mr. Anandjiwala appearing for Mr. Yagnik had withdrawn his earlier submission of not pressing application qua

petitioner no.2 and had submitted that this court should also record finding on merit qua petitioner no.2. All the while, ld. counsel has argued mainly qua petitioner nos. 1 & 3. However, in view of deviation made at the end of submissions, I have dealt with case of all the petitioners on merits without expressing any sense of condemnation a against petitioner no.2 Madhavprasad Swami, a violator of the liberty granted by this Court at the time of dealing with his application for bail i.e. Cri. Misc. Application No. 1730/2000 vide order dated 5.4.2000, referred to herein above. I would like to observe that he ought not to have prayed for bail raising plea only on the right flowing from sensitive Article 21 of the Constitution. I would also like to observe that no party is entitled to change the stand totally at the conclusion of trial when he has taken a particular stand initially or in the midst of submissions. Petitioner no.2 had not pressed for reasoned order for dismissal of his bail plea initially, but has changed the plea and has pressed for reasoned order visualising non-inclination to grant bail to petitioner nos. 1 & 3. This stand cannot sustain. However, as petitioner no.2 had expressed his wish to have an order on merits, I have considered his bail plea in the context of Article 21 of Constitution on merits with other petitioners so that he may not feel that his prayer on the strength of constitutional right has been thrown out technically by the highest Court of the State. I strongly deprecate this type of attitude of a party.

Date : 12-4-2001 [C.K. BUCH, J]
*rawal